

# Hither & Thither

104<sup>th</sup> Area Support Group Safety Office, Volume 1, October 2002



## Safety and the Supervisor

By Gary W. Helmer

There are a number of laws and regulations that govern a supervisor's conduct relative to the safety and welfare of his or her employees. Among these are: Title 29, Code of Federal Regulations (CFR) 1910 and 1960; Executive Order (EO) 12196; Department of Defense Instruction (DoDI) 6055.1; Army Regulation (AR) 385-10, 8101, and Title 5, United States Code (USC).

This inaugural issue of **Hither & Thither** attempts to present a broad overview of the supervisor's responsibilities and to show the varied laws and regulations involved. Hopefully, by providing an extract of pertinent documents, the supervisor will be able to better understand his or her essential duties in providing a safe and healthful workplace for all employees.

### 29 CFR 1910, Occupational Safety and Health Standards for General Industry

This law, also known as the Williams-Steiger Occupational Safety and Health Act (OSH Act) of 1970, provides the framework for the safety and health of employees. It involves and envelopes a number of other regulations, provisions, laws, and agencies in its implementation and is not the sole source for worker-related safety issues.

In order to include the consideration of hazards not covered in specific standards, OSHA has turned to the provisions of Section 5 of the OSH Act or the "General Duty Clause" which states:

- (a) Each employer:
- (1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or likely to cause death or serious physical harm to his employees;
  - (2) shall comply with occupational safety and health standards promulgated under this Act.

The OSH Act requires, in part, that every employer covered under the OSH Act furnish to his or her employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees. The OSH Act also requires that employers comply with occupational safety and health standards promulgated under the OSH Act, and that employees comply with standards, rules, regulations and orders issued under the OSH Act which are applicable to their own actions and conduct. The OSH Act authorizes the Department of Labor (DoL) to conduct inspections, and to issue citations and proposed penalties for alleged violations. The OSH Act, under section 20(b), also authorizes the Secretary of Health, Education, and Welfare to conduct inspections and to question employers and employees in connection with research and other related activities. The OSH Act contains provisions for adjudication of violations, periods prescribed for the abatement of violations, and proposed penalties by the Occupational Safety and Health

Review Commission, if contested by an employer or by an employee or authorized representative of employees, and for judicial review.

### 29 CFR 1910.120(e), Training

All employees working on site (such as but not limited to equipment operators, general laborers and others) exposed to hazardous substances, health hazards, or safety hazards and their supervisors and management responsible for the site shall receive training meeting the requirements of this paragraph before they are permitted to engage in hazardous waste operations that could expose them to hazardous substances, safety, or health hazards, and they shall receive review training as specified in this paragraph.

### Executive Order 12196, Occupational Safety and Health Programs for Federal Employees

This EO applies to all agencies of the Executive Branch except military personnel and military unique equipment. It does however require that each agency utilize as inspectors "personnel with equipment and competence to recognize hazards." Inspections shall be conducted by inspectors qualified to recognize and evaluate hazards of the working environment and to suggest general abatement procedures.

### 29 CFR 1960, Industrial Application of Regulatory Initiatives

This section of the OSH Act contains special provisions to assure safe and healthful working conditions for Federal employees (including the military). Specific duties are outlined throughout including the following parts:

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## **29 CFR 1960.9, Supervisory Responsibilities**

Employees who exercise supervisory functions shall, to the extent of their authority, furnish employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm. They shall comply with the occupational safety and health standards applicable to their agency and with all rules, regulations and orders issued by the head of the agency with respect to the agency occupational and health program.

## **29 CFR 1960.11, Evaluation of Occupational Safety and Health Performance**

Each agency head shall ensure that any performance evaluation of any management official in charge of an establishment, any supervisory employee. Or other appropriate management official, measures the employee's performance in meeting requirements of the agency occupational safety and health program, consistent with the employee's assigned responsibilities and authority, and taking into consideration any applicable regulations of the Office of personnel Management or other appropriate authority. The recognition of superior performance in discharging safety and health responsibilities by an individual or group should be encouraged and noted.

## **29 CFR 1960.54, Training of Top Management Officials**

Each agency shall provide top management officials with orientation and other learning experiences which enable them to manage the occupational safety and health programs of their agencies. Such orientation should include coverage of section 19 of the OSH Act, Executive Order 12196, the requirements of this part, and the agency safety and health program.

## **29 CFR 1960.55, Training of Supervisors**

Each agency shall provide appropriate safety and health training which includes supervisory responsibility for providing and maintaining safe and healthful working conditions for employees, the agency occupational safety and health program, section 19 of the Act, Executive Order 12196, this part, occupational safety and health standards applicable to the assigned workplaces, agency procedures for reporting hazards, agency procedures for reporting and investigating allegations of reprisal, and agency procedures for the abatement of hazards, as well as other appropriate rules and regulations.

This supervisory training should include introductory and specialized courses and materials which will enable supervisors to recognize and eliminate, or reduce, occupational safety and health hazards in their working units. Such training shall also include the development of requisite skills in managing the agency's safety and health program within the work unit, including the training and motivation of subordinates toward assuring safe and healthful work practices.

## **29 CFR 1960.58, Training of Collateral Duty Safety and Health**

## **Personnel and Committee Members**

Within six months after October 1, 1980, or on appointment of an employee to a collateral duty position or to a committee, each agency shall provide training for collateral duty safety and health personnel and all members of certified occupational safety and health committees commensurate with the scope of their assigned responsibilities. Such training shall include: The agency occupational safety and health program; section 19 of the Act; Executive Order 12196; this part; agency procedures for the reporting, evaluation and abatement of hazards; agency procedures for reporting and investigating allegations of reprisal, the recognition of hazardous conditions and environments; identification and use of occupational safety and health standards, and other appropriate rules and regulations.

## **29 CFR 1960.59, Training of Employees and Employee Representatives**

- (a) Each agency shall provide appropriate safety and health training for employees including specialized job safety and health training appropriate to the work performed by the employee, for example: Clerical; printing; welding; crane operation; chemical analysis, and computer operations. Such training also shall inform employees of the agency occupational safety and health program, with emphasis on their rights and responsibilities.
- (b) Occupational safety and health training for employees of the agency who are representatives of employee groups, such as labor organizations which are recognized by the agency, shall

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include both introductory and specialized courses and materials that will enable such groups to function appropriately in ensuring safe and healthful working conditions and practices in the workplace and enable them to effectively assist in conducting workplace safety and health inspections. Nothing in this paragraph shall be construed to alter training provisions provided by law, Executive Order, or collective bargaining agreement.

## **Department of Defense Instruction 6055.1, DoD Occupational Safety and Health Program**

This instruction applies to the Office of the Secretary of Defense (OSD), the Military Departments (including the Coast Guard when it is operating as a Military Service in the Navy, and the Army-Air Force Exchange Service), Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense, the Uniformed Services University of the Health Sciences, the Defense Agencies, and the DoD Field Activities, including any other integral DoD organizational entity or instrumentality established to perform a Governmental function (hereafter referred to collectively as "the DoD Components"). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

It encompasses all DoD personnel and operations worldwide during peacetime and military deployments. These provisions consider limitations on the applicability of 29 U.S.C.651 et seq., E.O.12196 and 29 CFR 1960 (references (d), (f), and (g)) to the Department of Defense. These limitations include the exemptions or exceptions from Department of

Labor (DoL) oversight for military personnel, military-unique operations and workplaces, specific conditions governed by other statutory authorities, and, in certain overseas areas, conditions governed by international agreements.

It includes risk management, aviation safety, ground safety, traffic safety, occupational safety, and occupational health.

It excludes explosive safety covered under DoD 6055.9-STD (reference (h)) and fire prevention and protection covered under DoD Instruction 6055.6 (reference (i)).  
2.5. Does not apply generally to DoD contractor personnel and contractor operations. Additional details are given in Enclosure E5. In peacetime operations performed in the Continental United States or its territories or possessions, the contractor is responsible directly to Federal or State Occupational Safety and Health Administration (OSHA) for the safety and health of contractors' employees. See Enclosure E3. for evaluation of DoD contractor exposures during wartime and peacekeeping operations.

Section E3 of the regulations states, "Commanders, supervisors, and managers are responsible for protecting personnel, equipment, and facilities under their command by using the risk management process, and for effective implementation of safety and occupational health policies."

## **Army Regulation 385-10, The Army Safety Program**

This regulation prescribes the Department of the Army (DA) policies, responsibilities, and procedures in place to protect and preserve Army personnel and property against accidental loss. It

provides for public safety incident to Army operations and activities, and safe and healthful workplaces, procedures, and equipment. The regulation assures statutory compliance. It also mandates the Army safety Program policies, procedures, and guidelines into one comprehensive program for all DA personnel and operations worldwide.

Specific supervisory duties include the following:

### **1-4. Responsibilities**

o. Commanders at all levels will be responsible for protecting personnel, equipment, and facilities under their command; effective implementation of safety and occupational health policies; and the integration of the risk management process into their safety and occupational health program.

p. Supervisory and operating personnel who direct or affect the actions of others will -

### **2-2. Operational Procedures**

Leaders and managers are responsible for integrating risk management into all processes and operations. Safety and occupational health staffs will provide risk management training, tools and other related assistance. Leaders and managers will -

a. Ensure that physical standards for facilities and equipment meet or exceed safety and health standards established in pertinent host government, Federal, State, and local statutes and regulations and in Army regulations. Specific requirements and guidance for applying such standards are in chapter 3.

b. Ensure that the risk management process is incorporated in regulations, directives, SOPs,

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special orders, training plans, and operational plans to minimize accident risk and that SOPs are developed for all operations entailing risk of death, serious injury, occupational illness or property loss. The risk assessment matrix can be tailored by the commander for the type of hazard identified. For example, the matrix in this regulation should be used for hazards involving unsafe or unhealthful working conditions and other hazards associated with base operations. The risk assessment matrix in FMs 100-14 and 101-5 should be used for military training and operational hazards. Effective integration of risk management into the military decision-making process for military training and operations may be found in FMs 100-14 and 101-5.

c. Develop and implement actions to meet responsibilities contained in the accident prevention plans of higher headquarters and to provide focus and continuity to safety program efforts.

d. Post DD Form 2272 (Department of Defense Safety and Occupational Health Program) in all industrial workplaces. (See fig 2-1.)

e. Ensure that appropriate safety and occupational health training is provided as follows:

(1) All Active Army, Army National Guard (ARNG), USAR, and Army civilian employees will be provided the training and education necessary to achieve the skills listed below. This training, as a minimum, will be in accordance with subpart H, part 1960, title 29, Code of Federal Regulations (29 CFR 1960).

(a) Recognize the hazards and accident risks associated with their duties and work environment and know the procedures necessary to control these risks and work safely.

(b) Know their accident prevention related rights and responsibilities as outlined in relevant statutes and regulations.

(c) As appropriate, know the safety responsibilities of their leaders, supervisors, and commanders.

(2) Commanders, supervisors, and safety and OH staff personnel will be provided specialized training to enable them to properly execute their safety, OH, and risk management leadership and staff responsibilities.

(3) Safety education and promotional materials such as posters, films, technical publications, pamphlets, incentive items, and related materials are proven cost-effective safety awareness tools.

f. Ensure personnel are protected from reprisals for exercising lawful OSH rights. All DA personnel, both military and civilian, will be protected from coercion, discrimination, or reprisals for participation in the Army safety and OH program.

(1) Such procedures will include provisions to preserve individual anonymity of those submitting safety and health complaints when requested; to ensure prompt, impartial investigation of allegations of reprisal; and to provide corrective action when such allegations are substantiated.

(2) Under the provisions of 29 CFR 1960.46, the above protection against reprisal extends specifically to the right of an Army civilian to decline to perform an assigned task because of a reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious bodily harm and that there is insufficient time to seek effective redress through normal hazard reporting and abatement procedures.

g. Establish specific plans to assure continuity of safety and OH program services during tactical operations or mobilization. These plans will address mission definition, organizational concepts, and staffing and operational procedures required to assure maximum safety

function support to the combat mission. Such plans will be developed by all organizations and commands having a combat or combat support mission (for example, TOE units, depots, ammunition plants, and area support groups).

h. Conduct annual safety and loss control program evaluations of subordinate commands using results-oriented criteria.

i. Develop effective programs to reduce injuries and illness to ensure that--

(1) All injuries and illnesses have been thoroughly investigated and the facts from the investigation have been documented on appropriate reports and forms.

(2) Accident reports and compensation claim forms have been properly completed designating the injured employee's major command and servicing civilian personnel office.

(3) Compensation claims are challenged and controverted when necessary.

j. Establish procedures to ensure required PCE for personnel are provided, used, and maintained in accordance with part 1910, title 29, Code of Federal Regulations (29 CFR 1910).

(1) Military personnel. PCE will be furnished to military personnel performing industrial activities similar to those performed by civilian personnel.

(2) Funding. When required, PCE will be funded from appropriated fund accounts available at the installation or activity. Non-appropriated fund activities will provide PCE from their own funds unless authorized by appropriated fund sources or provided for in a host-tenant agreement.

(3) Issuance of special clothing and equipment to Army civilians.

(a) Special clothing and equipment include clothing and equipment needed for the protection of personnel to perform their assigned

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tasks efficiently under extreme conditions or situations. These include but are not limited to heat, cold, wetness, pressure, environmental pollution (for example, toxic or hazardous gases, vapors, fumes, or materials); deleterious animal, insect, parasitic, or amoebic life; or any combination of these conditions..

(b) Commanders are authorized to requisition and issue special clothing and equipment on a temporary loan basis from any inventories, other than those of the Army Stock fund, to all direct-hire civilian employees. The following criteria must be met:

1. The use of special clothing and equipment would serve a military purpose.

2. The purchase of such clothing and equipment from commercial sources would not be practicable or would cause undue hardship on the individual concerned.

3. The clothing and equipment issued would be returned to the issuing organization when no longer required.

(4) Environmental differential pay. Environmental differential pay for civilian employees, when warranted, does not relieve the commander of the responsibility to provide appropriate PCE and to continue efforts to eliminate or reduce any hazardous conditions that justify such pay. Conversely, the requirement to wear PCE in any particular work environment does not, of itself, provide justification for environmental differential pay.

(5) Use of PCE by visitors and transients. For all activities in which official visitors and transients may be potentially exposed to hazards, the host, guide, or area supervisor will conduct a risk assessment of the work location to determine the appropriate protective measures. If the host, guide, or area supervisor can reduce the hazard(s) to an acceptable level without requiring the use of PCE, those measures

may be employed (that is, eliminate foot hazards-no safety shoes). However, if it is determined that a safe level of risk cannot be obtained by using these procedures, then the host, guide, or area supervisor will be responsible for providing and assuring the proper use of PCE and the official visitors and transients will be required to wear the specified PCE.

k. Establish and operate an effective explosives safety program to include--

(1) Exercising supervision over subordinate organizations to ensure that effective explosives safety procedures are implemented and maintained to include specific plans to correct violations of explosives safety standards.

(2) Publishing a command program to implement HQDA ammunition and explosives safety standards and to identify responsibilities for all subordinate organizations (including tenants) that store, handle, use, or transport explosives.

(3) Ensuring qualified safety personnel (GS/GM-018 or GS/GM-803) review explosives safety site plans, safety submissions, and facility designs for new or modified explosives sites or facilities within the safety arcs of explosives operations.

(4) Ensuring qualified occupational safety personnel review explosives safety waivers and exemptions for facilities and equipment and provide the commander with essential risk data regarding the deficient situation.

l. Ensure that effective range safety procedures are implemented and sustained to include safety office review of all new range construction and all range waivers.

m. Publish command procedures to implement effective family, sports, and recreation safety programs and identify responsibilities for all subordinate organizations and installations.

n. Use the risk management process to establish and operate an effective water safety program to include--

(1) Water-related activities.

(a) Establish and operate a safety program for water operations and water recreational activities and publicize appropriate to the geographic area.

(b) Provide for inspection of water operations and recreational facilities, equipment, and adjacent areas on Army owned or leased properties. Such inspections will assure that safety and health requirements are met.

(c) Provide sufficient lifesaving equipment, communication equipment, first aid facilities, protective devices, and other equipment as shown in TB MED 575 at Army-controlled water operations and water recreational activities areas.

(d) Issue standing operating procedures for water operations and water recreational activities. Assure that all water operations and recreational facilities and equipment comply with safety and occupational health requirements. Army boats and lifesaving equipment must comply with U.S. Coast Guard and State or host country requirements.

(e) Inform personnel of the hazards of swimming alone, in cold water, after drinking, during hours of darkness, or in unauthorized areas.

(f) Provide water safety briefings before the start of any water operations and the swimming season.

(2) Water operations.

(a) Train persons involved in water operations on accident prevention measures.

(b) Identify military non-swimmers. Provide swimming instructions or water survival training for persons who will be involved in water operations. See FM 21-20 for detailed guidance.

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(c) Ensure that equipment used for water crossing operations is pre-dipped to detect water leakage.

(3) Water recreation activities.

(a) When possible, provide swimming instruction and water survival training for persons who engage in water recreational activities.

(b) Ensure that Red Cross certified or equivalent lifeguards will be on duty at Army water recreational areas at all times during hours of operation.

## Title 5, USC, 1801, The Federal Employees Compensation Act

Worker's Compensation (Federal Employees' Compensation Act [FECA]) provides monetary compensation, medical care and assistance (attendant allowances), vocational rehabilitation, and reemployment rights to federal employees who sustain disabling injuries as a result of their federal employment. FECA also provides for a fixed payment for the deceased employee's funeral expenses and for compensation benefits to qualified survivors of the decedent in cases of employment-related death.

The employee is responsible for establishing the essential elements of the claim – the burden of proof. The Office of Workers Compensation Program (OWCP) will help the employee to meet this responsibility, which is termed burden of proof, by requesting evidence need to establish these elements if such information is not included with the original submittal.

Supervisors have a duty to ensure that claims are legitimate. Should the supervisor question the validity of a claim, he or she should investigate the circumstances and report the results to OWCP. All such allegations must be supported

by factual evidence. Situations which may prompt the supervisor to conduct such an investigation, and actions which the agency may take, are as follows:

- A. Differing Versions. If the employee has given differing versions of the incident to different people, or several witnesses give differing accounts of the facts surrounding the injury, the supervisor should request a written statement from each person which details his or her knowledge of the situation.
- B. Previous Injury. If the employee reported to work on the date of the claimed injury with the appearance of a pre-existing condition or injury, the agency should obtain statements from witnesses which detail the relevant observations.
- C. Time Lags. If an injury is reported long after it alleged occurrence, and the employee appears to be able to perform normal duties, a written statement detailing the situation should be composed.
- D. Other Employment. If an employee who has claimed injury is reported to be working at another job, the supervisor should first ask him or her about the requirements of the other employment. Depending on the reply, the supervisor may wish to ask the employee for permission to contact the other employer for information about duties and periods of work.

## In Summary

Although varied, these laws and regulations comprehensively outline the supervisor's requisite duties and mandated requirements. Each of our subordinates relies on our ability to provide ample guidance in conducting any operation or activity

in a safe and healthful manner.  
*gwh/02*

## Some Websites You May Find Useful

104<sup>th</sup> Area Support Group  
[www.104thasg.hanau.army.mil/](http://www.104thasg.hanau.army.mil/)  
United States Department of Labor  
[www.osha.gov/pls/oshaweb/](http://www.osha.gov/pls/oshaweb/)  
SafetySmart.com  
[www.safetysmart.com/links/usaorg.html](http://www.safetysmart.com/links/usaorg.html)  
Injury Compensation for Federal Employees  
[www.nalc.org/depart/owcp/CA810.html](http://www.nalc.org/depart/owcp/CA810.html)  
Work and Off Duty Safety  
<http://safety.army.mil/pages/sbo/>  
OSHA Index  
[www.geocities.com/apwualbany/osh/a/oshaindex.html](http://www.geocities.com/apwualbany/osh/a/oshaindex.html)  
OSHWeb  
<http://oshweb.me.tut.fi/index.html>  
OSHA  
[www.osha.gov](http://www.osha.gov)  
Reference Desk  
[www.refdesk.com/](http://www.refdesk.com/)

Your questions and  
comments are always  
welcome.

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**Thanks!**